

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,

Plaintiffs,

VS.

RICK PERRY, *et al*,

Defendants.

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CIVIL ACTION NO. 2:13-CV-00193

**DECLARATION OF NON PARTY STATE SENATOR RODNEY ELLIS**

My name is Rodney Ellis and I am over the age of 18 and competent in all respects to make this declaration. I have personal knowledge of the matters stated below which are true and correct.

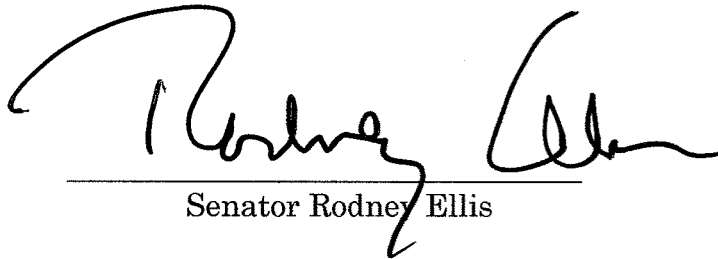
1. I was served with a the Subpoena to Produce Documents by the State of Texas, Rick Perry, the Texas Secretary of State and Steve McGraw ("Defendants") on June 11, 2014.
2. I provided documents responsive to the Defendants' Subpoena to Produce Documents.
3. The documents identified in Exhibit A are a subset of documents included in my response to the Defendants' Subpoena to Produce Documents. These documents are kept, created, or retained in the the ordinary course of my Senate duties.

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09/02/2014  
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4. It is the regular practice to keep, create or retain the documents produced in response to Defendants' Subpoena to Produce Documents, including the documents identified in Exhibit A.
5. The responsive documents, including those identified in Exhibit A, are true copies of the records in my possession.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: September 3, 2014



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Senator Rodney Ellis

**EXHIBIT A**

<b>First Bates Page #</b>	<b>Last Bates Page #</b>	<b>Description</b>
RE-PRIV000071	RE-PRIV000071	Notice of Intent (Full) for Bill 676
RE-PRIV000166	RE-PRIV000166	Ellis Laments Passage of Overly-Restrictive Voter ID Law
RE-PRIV000262	RE-PRIV000265	Ellis Voter ID Bills Just Suppression in Disguise Senator Rodney Ellis
RE-PRIV000335	RE-PRIV000338	Letter starting with "Dear Friend, The 79th Legislative Session has come to a close, and I want to take this opportunity to update you on what happened - and didn't happen - in the Texas Capitol."
RE-PRIV000350	RE-PRIV000364	Letter starting with "Dear Friend, The 80th Regular Session of the Texas Legislature has ended, I want to take this opportunity to give you an extensive report or legislative I am proud to have passed."
RE-PRIV000432	RE-PRIV000433	January 5, 2007 Letter to Robert Duncan from Eddie Lucio Jr and Rodney Ellis, re enate Committee on Statue Affair's Interim
RE-PRIV000534	RE-PRIV000542	Letter to Christian Herren Jr re: Texas Secretary of State SB 14 Preclearance Submission
RE-PRIV000557	RE-PRIV000556	September 20, 2011 Letter to Texas DPS Director McCraw regarding DPS implementation of SB 14
RE-PRIV001643	RE-PRIV001647	Email from Jeremy Brown to sentorrge@aol.com, dated October 23, 2013, subject: FW Following up on the Voter ID mail out Thank you with Stan Stanart mail out
RE-PRIV001665	RE-PRIV001665	Email Tina Tran to senatorrge@aol.com, dated October 4, 2013, subject: Voter ID letter for Stan Stanart
RE-PRIV001668	RE-PRIV001670	Email Tina Tran to senatorrge@aol.com, dated October 3, 2013, subject: Voter ID letter to SOS
RE-PRIV001692	RE-PRIV001692	Email David Edmonson to senatorrge@aol.com, dated September 19, 2013, subject FW: DPS/Voter ID
RE-PRIV001757	RE-PRIV001758	Email Rodney Ellis to Jeremy Warren, dated July 25, 2013, subject Re: Release
RE-PRIV001823	RE-PRIV001824	Email from Jeremy Brown forwarding email Boyd L. Richie to SLANIG@gmail.com, dated February 28, 2011, subject Action Alert: Voter ID in Committee Tuesday

RE-PRIV002033	RE-PRIV002034	Email from David Edmonson forwarding email from Carl Whitmarsh to Kevin Hoffman forwarding Sondra Halton email, dated August 30, 2011, subject I'm a blogger now
RE-PRIV003357	RE-PRIV003358	Q&A fr regarding SB 14 litigation under Voting Rights Act. First question "Didn't the U.S. Supreme Court throw out section 5 of the Voting Rights Act the preclearance requirement - earlier this summer?"
RE-PRIV003422	RE-PRIV003424	Questions for Democratic Expert Witnesses From Harold Cook 1/25
RE-PRIV003554	RE-PRIV003557	Question & Answer SB14 Amendment & Disparate Impact Report - No Effective Date
RE-PRIV003558	RE-PRIV003561	Question & Answer SB 14 Amendment & Disparate Impact Report
RE-PRIV004358	RE-PRIV004361	Talking Points for Voter ID Panel
RE-PRIV004607	RE-PRIV004613	Talking Points Conversation with DOJ re: Voter ID, Thursday, April 5, 2012 3:30 pm

**Notice of Intent (Full)**

<b>Bill Number</b>	HB 626
<b>Author</b>	King, Phil   Christian   Macias   Paxton   Crabb
<b>Analyst</b>	Kenneth Besserman
<b>Senate Committee</b>	State Affairs
<b>Senate Committee Absent</b>	
<b>Senate Committee Ayes</b>	
<b>Senate Committee Nays</b>	
<b>Senate Committee PNV</b>	
<b>Miscellaneous (Office)</b>	
<b>Voted Against In Committee (Office)</b>	
<b>Fiscal Impact</b>	Not Evaluated
<b>Analyst Comments (Office)</b>	H.B. 626 requires a voter applicant to prove he or she is a United States citizen by furnishing a birth certificate or, if the person is a naturalized citizen, the city state, and year of taking the naturalization oath. The bill requires the voter registrar to verify with the secretary of state that the applicant is a United States citizen.
<b>Analyst Recommendations (Office)</b>	<p>Very bad voter ID bill. This is another bad voter ID bill that Dems have to stop.</p> <p>SHB 626 will Create Insurmountable Obstacles to the Registration of U.S. Citizens</p> <p>The Secretary of State will be unable to verify citizenship for many eligible voter applicants.</p> <p>The Secretary of State's efforts to verify citizenship will be inefficient, costly, and untimely.</p> <p>CSHB 626 Does Nothing to Address Voter Fraud</p> <p>No verified evidence exists documenting cases of non-citizen registration and voting. Investigations by the Texas Attorney General and Secretary of State records show no findings of non-citizen registration or voting.</p> <p>HB 626 does not address the more plausible forms of voter fraud including ballot tampering, mail-in ballots, voter intimidation, and electronic machine manipulation</p>



### Ellis Laments Passage of Overly-Restrictive Voter ID Law

Efforts to amend bill to protect Texas voters fail

(Austin, Texas)//Senator Rodney Ellis (D-Houston) today lamented passage of Senate Bill 14, so-called Voter ID legislation that will make it significantly more difficult for hundreds of thousands of legally-registered Texans to exercise their constitutional right to vote.

"We all agree that ensuring the integrity of the vote is extremely important," said Senator Ellis.

"Because that right is extremely important, we need to be careful moving forward so that we don't create unnecessary barriers to a scared, constitutional right.

"No one here is saying that having an ID unto itself at the polls is a bad thing," Ellis continued. "What we're saying is you must make sure that these proposed 'free' IDs are readily accessible. Unfortunately, everything we heard on the floor yesterday tells us that they won't be, and all efforts to ensure they would were voted down here today."

The fact is that SB 14 impacts potential over one million Texans who could well be eligible to vote but will not be able to while doing nothing to increase access to now-mandated IDs. For instance:

- **According to the DPS Driver Responsibility Program**, 1.2 million Texas drivers who have lost their licenses over surcharges cannot buy insurance until their fees are paid, but large numbers (if not virtually all) of them continue to drive. What's worse, under SB 14, they wouldn't have a form of ID required to vote.
- **You can lose your license for very minor offenses.** Lest we think that only those "bad people" or "felons" have their licenses suspended or revoked, unpaid surcharges, having no insurance, driving while license is invalid, passing a school bus, truancy or even simply failing to appear or pay a your fine for a traffic offense can lead to you having your license suspended. That is potentially hundreds of thousands of Texans, not a relative few.
- While much was said yesterday about the new amnesty program, **less than half of the 1.2 million are being offered amnesty.**
- The amnesty program affects anyone who was assessed a surcharge from the start of the program in September 2004 through the end of 2008. **So no one after 2008 can benefit.**
- Most importantly, we may well be **creating a new poll tax** under this bill. **If you have a fine that has led to your license suspension, you have to pay DPS for the right to vote...**not just your fine, but your surcharges and more. That may well violate the Voting Rights Act.
- **None of the offices in Harris County are open on the weekend.** Save for an occasional 6 pm closing time, all of them are open from 8 am to 5 pm — when people work.



- According to testimony and studies, long lines and frustrating waits at DPS, and **three or four hour waits aren't out of the norm.**
- SB 14 does not take into account proposed budget cuts, which will **further increase the strain on the already over-tasked DPS employees.**
- According to DPS, **approximately 77 counties in Texas currently have no DPS center** for voters, forcing Texans into long drives and more time in order to get a mandatory ID. This is a double burden for those with no vehicles or access to public transportation.
- **There are no DPS offices located in most inner-city neighborhoods in Texas.** For instance, in Houston, there are no DPS offices located inside of the I-610 loop.

"Texas has a long and sad history of making it difficult for people to vote," said Senator Ellis. "Men and women in this chamber repeatedly voted to keep people out of the voting booth. Decades later, history judges those men and women in a harsh light.

"Thanks to that history, our state remains under federal oversight," said Ellis. "If we are going to place more red tape between the voting booth and our constituents, I firmly believe it is our duty that we ensure it's a well thought out plan and protects the rights of all legal voters. We have not done that today. Instead, the Texas Senate has made it far more difficult for potentially hundreds of thousands of legal, registered voters to exercise their constitutional right. That is wrong... and it will be remembered."



Voter ID Bills Just Suppression in Disguise  
Senator Rodney Ellis

For the second consecutive session, the Texas Legislature is tying itself in knots over an proposed solution to a problem that flat out doesn't exist. A solution which would disenfranchise thousands of legal Texas voters and likely get Texas tied up in court for suppressing the right to vote. Just like last session, organizations representing seniors, the disabled, African American and Hispanic Texans have

I'm talking about measures to require Texans to show picture identification in order to exercise their constitutional right to vote to combat so-called to

One simple fact remains: After more than two years, 20 hours of testimony and debate, a House Interim Committee study and a \$1.5 million Office of Attorney General investigation, supporters of these measures have yet to come up with one single case of the "voter fraud" they seek to stop. Not one.

The sad truth is that this issue is less about the integrity of our vote and more about blatant partisan politics. It is part of a nationwide effort. That nationwide effort, incidentally, is now the focus of several federal investigations and has led the former head of the U.S. Department of Justice's Civil Rights Division, Joseph Rich, to

These measures are solutions in search of a problem. In Texas, and across the country, advocates of these voter suppression bills have failed to find any evidence

We've heard time and again the horror stories of dead voters casting the deciding vote; we've heard the term "voter fraud" thrown around. Supporters of these efforts cannot provide one single instance in which people in Texas have voted using false identification. Not one. In House side with hours of testimony, yet not one documented case of fraud. This is a solution searching desperately for a problem.

Can the supporters of this bill give us evidence – any evidence, any proof – of an individual voting using false identity? Can supporters of this bill give the facts? Can they show us proof? No they can't.

I'll give you a fact: while Voter ID proponents cannot come up with a single case, we have evidence that shows these plans lead to a significant drop in turnout, particularly for African Americans and Hispanics.

Every day we see more and more evidence that so-called voter fraud is just not occurring. We know for a fact that the greatest level of fraud occurs with mail in ballots, not at the polls yet here we are again focusing on a solution past history and current courts tell us is just a new poll tax to suppress the vote.

(Austin)//At a press conference today, Senator Rodney Ellis (D-Houston) announced that he has 11 signatures to block Senate debate of the so-called "Voter I.D." legislation under consideration by the Texas House. Senator Ellis was joined by representatives of Common Cause, The People



for the American Way, Advocacy Incorporated, the League of Women's Voters and the American Civil Liberties Union in calling for defeat of this divisive measure.

"Like last session, I have the votes to defeat plans to enact voter intimidation laws," said Senator Ellis. "We've seen this movie before, and we know how it ends. It's time to drop this dangerous and divisive plan and concentrate on reforms that will actually improve our electoral system."

During the 79th Legislative Session, Senator Ellis and Senator Leticia Van de Putte (D-San Antonio) led efforts to defeat the voter intimidation bill, which would have made it more difficult for elderly, low-income and minority Texans from voting. Last session, SB 89 would have established some of the most restrictive voting laws in the nation. The legislation, opposed by groups ranging from AARP to MALDEF to the NAACP and LULAC, would have required that a voter show a voter registration card and picture identification or two forms on non-picture identification in order to vote. If a voter could not meet these requirements, the voter would be allowed to vote provisionally or the voter would have to go home to retrieve the necessary ID and come back to cast a regular ballot. Voters who didn't have the required ID with them and cast provisional ballots would have to go the courthouse to show photo ID within 5 days after the election, or their vote would not count.

The attempt to weaken voting rights is now a national movement. Twenty five states have either enacted or attempted to pass legislation that would require photo ID to be eligible to vote despite no documented evidence that a voter has voted in any state using false identification.

In late 2005, the *Washington Post* reported that career attorneys in the Justice Department's Civil Rights Division recommended that the federal government reject the state of Georgia's plan to require voters to provide photo identification, but were overridden by political appointees within the department. According to the report, career officials found that the Georgia Voter ID plan would weaken African Americans right to vote. Last month, a U.S. District Court judge blocked implementation of the Georgia Voter ID plan, comparing the law to the poll tax.

"There is overwhelming evidence that the voter ID plan is a solution in search of a problem," said Ellis. "Supporters of this effort continue to throw charges, anecdotal evidence and rhetoric around, but cannot point to one single case of voter impersonation. Those of us opposed, however can cite case after case of voter intimidation and suppression. The same concerns we raised here in Texas were echoed by career justice department officials."

Voter I.D. proposals would create tremendous barriers for Texans to vote. Studies have shown as many as 21 million -- 11 percent -- do not have a photo ID. These Americans are predominantly elderly, low-income and/or minority. In Georgia, for instance, 33 percent of seniors over 75 do not have a valid driver's license. In addition, with the passage of the *Real ID Act* in Congress, it will become more difficult to obtain an official state ID.

In addition, a study of the 2004 presidential election showed that states which passed voter I.D. laws experienced an turnout reduction of 3 percent overall, and a steeper drop among Hispanics and African Americans. According to the study, prepared by scholars at Rutgers and Ohio State Universities for the Federal Election Assistance Commission, African Americans were 5.7 percent less likely to vote and Hispanics were 10 percent less likely to vote in states which passed stringent identification laws.

"We will not allow this blatant voter intimidation plan to become the law in Texas," Ellis said. "We've come to far and fought too hard to go back."



Dear Friend,

I wanted to provide you a quick update on what's happening with redistricting, voter ID, and some other important issues I have been working on in Austin and here in Houston.

I hope you find this information helpful.

Sincerely,

A handwritten signature in black ink that reads "Rodney Ellis". The signature is fluid and cursive, with the first name "Rodney" and the last name "Ellis" clearly distinguishable.

Rodney Ellis

### **Redistricting (Almost) Solved**

A San Antonio federal court handling litigation regarding Texas' recent redistricting finally released the interim maps that will govern the upcoming congressional and legislative elections. [Click here](#) to view the new maps to see in which districts you live.

The court also announced that the primary will be held on May 29. There is still a chance, however slight, that the date could move again. The interim maps adopted by the San Antonio court have to get cleared under the Voting Rights Act by the U.S. Department of Justice. Further, a dissatisfied party to the redistricting litigation could appeal and ask the U.S. Supreme Court to review the maps and the San Antonio court's explanation for how they were drawn.

I believe the maps should have gone much further in reflecting the astounding minority population growth that Texas has experienced over the past decade, both in Houston and the remainder of the state. In the last decade, 89 percent of both Texas' and Harris County population growth has been due to minority growth, yet the interim maps fail to fully account for this growth. Only one new real congressional minority opportunity district was created under the interim plan, despite the fact that nearly all Texas' growth is due to minority -- predominantly Hispanic -- growth. And that was in North Texas, not Harris County.

It's even worse in state legislative races. Nearly 90 percent of Texas growth is due to growing minority population, yet we gained no new seats in House and Senate. Texas is now 54.1 percent minority -- and growing -- yet only one-third of Texas legislative seats are minority opportunity districts. The math doesn't add up.

It's important that you tell your friends and family about the new May 29 primary date. My concern is that an odd date that has been in flux for so long will decrease turnout in our communities. I promise to do my part to keep you informed of any future changes.



Dear Friend:

The 79th Legislative Session has come to a close, and I want to take this opportunity to update you on what happened -- and didn't happen -- in the Texas Capitol.

I hope that you find this Ellis Email Express informative and urge you to send me any comments or questions you have regarding the issues in this newsletter. Thank you all for the kind words and letters of support that you have sent my way over the last many months. Your feedback this session has been very important to me.

**79th Legislative Session a Mixture of Successes, Missed Opportunities**

TEXAS Grants, taxes, voting rights and criminal justice reforms top list of Ellis accomplishments

Senator Rodney Ellis (D-Houston) today called the overall 79th legislative session a bushel of missed opportunities, but noted key Ellis accomplishments in higher education, criminal justice, voter protection, prescription drugs, education, and criminal justice, but key failures on major priorities to Texans, particularly on school finance.

"I am extremely pleased with some of the things we were able to accomplish," said Ellis. "Under very difficult circumstances, we were able to protect and strengthen the TEXAS Grant program, provide more accountability to all financial aid programs, implement revolutionary change to our criminal justice system while preserving past gains, and stopped new regressive tax increases and pernicious voting restrictions."

"This legislature failed miserably in improving our schools and developing a fairer, more equitable tax system," said Ellis. "Under both the House and Senate school finance and tax plans, the vast majority of Texans would have ended up paying more money for less. The GOP leadership would have cut taxes for people living in big fancy homes, raise taxes on everyone else, and then not invest any real money in our kids' schools. They wanted to go from Robin Hood to robbing everyone and, in the end, our kids wouldn't have seen a dime in new money. Those are the wrong priorities for Texas and I am pleased we didn't take this step back."

Senator Ellis led the effort to protect the TEXAS Grant program from crippling new restrictions that would have forced thousands of students to lose their aid. At the beginning of the session, the program faced a \$130 million budget cut and significant new grade-point and hours-per-semester requirements that would have forced thousands of students to lose their grant. Thanks to Senator Ellis' leadership, TEXAS Grants received a \$40 million funding increase and no significant new restrictions.

Since the TEXAS Grant program was created in 1999, authored by Senator Ellis, over 115,000 young Texans have received 235,000 TEXAS Grants totaling over \$648 million to help them pay for college. Forty-six percent of TEXAS Grants have gone to Hispanic students, 13 percent to African American students and 34 percent to Anglo students.

Ellis also passed legislation providing the first pay raise to Texas jurors in over 50 years, a major reform that could have a revolutionary impact on Texas civil and criminal juries. Senate Bill



1704 would provide a pay raise for Texas juries for the first time since 1954, when the current rate of \$6 a day was established. It would increase compensation to \$40 a day by charging an additional \$4 fee on criminal convictions.

"If you did not receive a pay raise in 50 years, you'd walk off the job too," said Ellis. "That's what is happening now. As a result, we are flirting with having our court system being ruled unconstitutional because the jury box is not representative of Texas."

The low compensation rate is making it more difficult for counties to attract jurors and reducing diversity in the jury box. Low income and minority Texans are currently drastically underrepresented on juries at levels that experts warn jeopardize the constitutional legitimacy of many convictions. Latinos, for example, comprise more than 30% of the population of Dallas and Harris counties, but make up only 10% of the jury venires.

Ellis also led the effort to defeat a pernicious voting rights provision that would have created barriers for minority, low-income and elderly Texans to exercise their constitutional right to vote. The provision would have required Texans to show a picture ID in order to vote, which would have disenfranchised anywhere from 6 to 10 percent of Texans. Past efforts to require IDs to vote were struck down by the U.S. Department of Justice under Presidents Ronald Reagan, George H.W. Bush and Bill Clinton. Ellis helped organize enough members to defeat the provision in three separate bills, and even prepared for a late-session filibuster that finally defeated the measure.

"With Texas' Jim Crow past and dismal turnout rates, we shouldn't be making it more difficult for people to vote," said Ellis. "The fact of the matter is that supporters of this provision could not point to one single case in which someone in Texas voted using false papers. Not one. Study after study has shown that this issue is a red herring and that the chief form of electoral fraud occurs with mail-in ballots. No one even mentioned tackling that issue. In fact, supporters of the ID provision encouraged more vote-by-mail. In other words, they were encouraging more fraud."

### Key Ellis Accomplishments

- **Preserving TEXAS Grants:** Ellis spearheaded efforts to protect the TEXAS Grant program, defeating new restrictive measures that would have forced thousands of students to lose their financial aid.
- **Jury Pay Increase:** Ellis championed legislation, SB 1704, that will provide Texas jurors with their first pay raise in over 50 years, which will dramatically improve participation in the system and increase diversity on Texas juries.
- **Access to More Affordable Prescription Drugs:** Senator Ellis led the effort in the Senate to ensure Texans have access to more affordable prescription drugs. SB 410 included an amendment similar to Ellis' SB 518, which will allow the Texas Board of Pharmacy to inspect "brick and mortar" Canadian Pharmacies so that Texans will have safe options for less expensive prescription drugs from Canada.
- **Killed Voter ID:** Ellis led the effort to defeat a Jim-Crow-style voter initiative that would have made voting more difficult for thousands of legal Texas voters.



- **AIDS in Prisons:** Ellis sponsored legislation that will tackle a quiet but serious and growing problem -- Texas prisoners returning to their communities unaware that they have contracted HIV in prison. HB 43 will require the Texas Department of Criminal Justice to screen inmates upon release. Nineteen other states have implemented this policy.
- **City of Houston Priorities:** Senator Ellis was pivotal to achieving four of the City of Houston's top priorities.
  - **Houston Land Bank:** Senator Ellis passed legislation to help the City of Houston improve the quality of life in densely populated urban areas. Senate Bill 356 will give the city more options in rehabilitating older communities and developing more affordable housing and livable neighborhoods.
  - **Safe Clear:** At the beginning of the 79th Legislative Session, Senator Ellis helped stop legislative efforts to eliminate the city's *Safe Clear* towing program. Ellis was the only Senator not to sign onto legislation that would put a halt and worked closely with Mayor White to ensure the safety program could continue.
  - **Cameras at Red Lights:** Senator Ellis ensured the City of Houston could continue to protect Houston drivers' safety with the placement of strategic red light cameras. Ellis defeated repeated efforts to change state law to ban such cameras.
  - **TIRZ:** Senator Ellis passed legislation enhancing Houston's Tax Increment Reinvestment Zones. Senator Ellis attached his bill SB 1198 to SB 771, which will give the city more flexibility and provide more cost savings to taxpayers when development occurs faster than originally estimated.
- **Averted Weakened Standards for Death Penalty Appeals:** Senator Ellis helped defeat a measure, HB 268, that would have significantly weakened standards for the appointment of counsel in death penalty cases and sped up Texas' Death Row Express.

## Near Misses

Several key Ellis initiatives made progress through the legislature but failed to reach the governor's desk.

- **Indigent Defense:** In the waning hours of the 79th Session, an Ellis initiative to double state funding to help counties meet the costs of indigent defense was killed. Senator Ellis had attached an amendment to SB 368, the judicial pay raise bill, that would provide at least \$13 million more per year to indigent defense funding. Texas ranks 44th in the nation in what the state provides counties to meet indigent defense costs.
- **Tuition Dereg Rollback:** Senator Ellis, a long-time opponent of tuition deregulation, attached an amendment to SB 1228 to eliminate the practice in 2008. Eliminating tuition deregulation would put the responsibility for providing adequate funding to Texas' public universities back in the hands of the legislature. Senate Bill 1228 passed the Senate but failed to pass the House.
- **Removing Red tape for wrongful imprisonment compensation:** In 2001, Senator Ellis passed legislation to increase compensation for wrongfully imprisoned Texans, raising the payment from a flat \$25,000 to \$25,000 per year spent in prison. In 2003, an amendment to require someone who has been wrongfully imprisoned must receive a letter from the District Attorney's office that prosecuted them declaring they were actually innocent. This new layer of bureaucratic red-tape has kept several Texans from receiving the compensation they are



entitled to. Senator Ellis attached an amendment to HB 2233 to remove this requirement, but that legislation was killed on a point of order in the House.

- **Journalist Shield Law:** Senator Ellis made great progress in enacting a Shield Law for Texas journalists and their sources, but the legislation did not pass the Texas Senate. Today there is essentially no state or federal constitutional protection for journalists who are called to testify, turn over reporters notes or otherwise participate in a criminal case in the state of Texas. Ideally the First Amendment would be such a shield, but the courts have largely taken away the understood privilege of the press to protect whistleblowers. The need to protect the confidentiality of sources is often fundamental to a reporter's job. Thirty-one other states and the District of Columbia have enacted Shield laws to protect the free flow of information.

### Houston Chronicle Profile

In the final days of the session, *Houston Chronicle* reporter Kristen Mack got a behind-the-scenes look at how Senator Ellis operates in the legislature. Attached is a link the profile piece, which ran in the May 30, 2005 edition of the *Chronicle*.

<http://www.chron.com/cs/CDA/ssistory.mpl/metropolitan/mack/3203218>

Dear Friend:

Now that the 80th Regular Session of the Texas Legislature has ended, I want to take this opportunity to give you an extensive report on legislation I am proud to have passed. We addressed a number of important issues including:

- Fighting to end genocide in Sudan
- Making college more affordable
- Improving access to affordable and quality health care for Texas children and adults
- Helping to prevent the spread of HIV/AIDS
- Improving our environment
- Securing funding for Texas Southern University and Prairie View A&M University
- Helping low income Texans cope with the rising costs of energy
- Creating a more fair and just criminal justice system
- Protecting our constitutional right to vote, and
- Creating opportunities for more Texans to own their first home.

We also worked tirelessly in other areas to advance issues and move the debate forward in many other areas. These issues include increasing the state minimum wage, fully funding TEXAS Grants, passing the statewide smoking ban, ensuring healthcare coverage for those with mental illnesses, securing reliable and affordable energy alternatives, increasing stem cell research, protecting the freedom of the press and supporting our troops' families.

### **Taking a Stand Against Genocide**

Of all of the bills and all of the issues I worked on this session



nothing makes me more proud than the passage of "Stop the Genocide Act." This historic legislation was signed into law by the Governor on June 21 at the Houston Holocaust Museum.

Working closely with Senator Florence Shapiro (R-Plano), Representative Corbin Van Arsdale (R-Houston) and dozens of other committed legislators, the new law will require state pension funds to divest from companies doing business in Sudan. The targeted divestment approach will maximize the impact on the Sudanese government while minimizing harm to the Sudanese civilians and investment returns.

According to the Sudan Divestment Task Force, over the past four years, the Sudanese government and their allied organizations have killed more than 400,000 people and displaced more than 2.5 million in Sudan's Darfur region. The U.S. government has already declared these ongoing atrocities to be genocide. The U.N. has declared the crisis the "worst humanitarian disaster in the world today."

I believe with all my heart that this historic legislation will make a real difference. The state of Texas has taken a strong stand against genocide and we have sent a message to the world that we will not tolerate turning a profit on genocide.

**TEXAS Grants -- We need to do more to open the door to college**

To open the doors of college to more young Texans, I authored legislation in 1999 that created the TEXAS Grants program. TEXAS Grants provides tuition and fees to students who have taken the *Advanced* or *Recommended* curriculum in high school. By every account, the program has been a runaway success.

In 2000, the first year of the program, nearly 11,000 students received a TEXAS Grant to pay for college; by 2002 68,178



students received a TEXAS Grant -- every eligible student. Unfortunately, frozen funding beginning in 2003 and the devastating impact of tuition deregulation has left more and more students on the sideline.

In 2003, we faced a \$10 billion budget shortfall and had to make some very difficult cuts. During the worst of times, we asked Texans to sacrifice but we also sacrificed some people. We made a promise that, when the economy improved, we would restore those cuts and build a stronger foundation for Texas families.

Last month, with a \$14 billion surplus, the legislature passed a \$150 billion budget, but we still have still not brought the TEXAS Grant program back to where they should be. We are still sacrificing middle class and low-income Texans in the best of times.

Now, we did make some progress. We did increase TEXAS Grant funding from \$334 million to \$427 million, and more than 35,000 additional students will receive aid to go to college. But, despite those increases, fewer students will receive a TEXAS Grant next year than received a TEXAS Grant in 2002. That is just not acceptable to me. I think we could have done a lot better.

Next session I will continue to push for full funding of the TEXAS Grants program to ensure that every eligible student, every child who is working hard and playing by the rules gets what we promised them.

#### **Ending Tuition Deregulation**

One of the biggest factors contributing to the dwindling number of TEXAS Grants (not to mention the virtual elimination of the Texas Tomorrow Fund) is the skyrocketing cost of college tuition. Since 2003, when tuition deregulation was passed, tuition has increased by 80 percent, with no end in sight. It is simple math: if tuition



goes up, each TEXAS Grant costs more money. We are not putting enough money in to keep up with the cost of tuition deregulation.

Let's look at the raw numbers. In spring 2003, the statewide average designated tuition was set at \$550 per semester (15-hours). In fall 2003 -- the last semester in which the Legislature had control of setting tuition rates -- the statewide average was \$625. By spring 2004, the average had risen to \$715 per semester; fall 2006, the statewide average has soared to \$1,128. The cost at our flagship and major public universities is even higher, with tuition increasing by more than 100 percent at the University of Texas at Austin and Texas A&M University.

Higher education in Texas was once one of the best bargains in the nation; now, we are one of the least affordable. The cost of going to college in Texas now exceeds the national average; when you take into account the median income in Texas is below the national average, it is no wonder why Texas now receives an "F" when it comes to college affordability. If we continue down this path, allowing tuition to go up and up and up, fewer and fewer Texas families will be able to afford the rising cost of college.

To deal with this issue, I filed several bills -- SB 96, SB 577, SB 578, and SB 579 -- to reign in tuition deregulation, from capping it at 5 percent per year to virtually eliminating it after 2009. Unfortunately, each bill failed to pass the Senate.

This issue is not going to go away. More and more Texas families are feeling the pinch of skyrocketing college costs and a severe crisis is blooming. I predict we will be back here in two years wrestling with this issue again.



### **Securing Funding for TSU and Prairie View A&M**

This session I authored a bill that would have given the Governor some additional authority to reorganize universities and state agencies that are in financial trouble. My legislation would have prevented TSU and other universities from being put under a conservatorship that would have created accreditation problems. Unfortunately, that legislation did not pass but we were still able to secure some additional funding for Texas Southern University. The Governor has appointed a new Board of Regents which will develop a reorganization plan which will address the financial problems at TSU.

I worked hard to ensure that Texas Southern University will receive \$13.6 million for maintenance, repairs, contractual payments and provide funding for summer school contingent upon the university developing a suitable plan of reorganization or the appointment of a conservator. In addition, in 2008 and 2009 TSU will receive \$12.5 million each year for the Academic Development Initiative to be used for proven academic programs, existing graduate programs, undergraduate education and initiatives to target enrollment growth. This money is also contingent upon the university developing a suitable plan of reorganization or the appointment of a conservator.

### **Improving access to affordable quality healthcare**

#### ***Partial Restoration of CHIP***

This session I introduced SB 337, which would have fully restored the Children's Health Insurance Program (CHIP). Since legislative cuts to the program were enacted in 2003, over 200,000 children have lost their CHIP coverage. Although SB 337 did not pass, the Legislature did partially restore the cuts. As a result, 127,000 more children will have access to quality, affordable health insurance. Despite record spending in this budget, there are still over 1 million Texas children who lack healthcare--the highest number in



the nation. While we made significant strides in this area, there is still much to be done.

***Historic Cancer Research Initiative HJR 90, HB14 and the Statewide Smoking Ban (SB 368)***

Perhaps one of the greatest legacies of the 80th Texas legislature will be our passage of a plan to create a \$3 billion dollar cancer research fund allowing Texas to lead the nation in finding a cure for cancer.

I am proud to have led another effort to fight cancer that would have cost us very little--enacting a statewide smoking in public places. Unfortunately, despite overwhelming support by a majority of Texans, this measure did not pass. I plan to continue to work on this important issue that will save lives and save our state billions of dollars in health care costs over time.

I authored SB 453 and SB 1175/HB 1944 effort to prevent the spread of HIV/AIDS in our communities and combat incidences of sexual assault. The prevalence of HIV infection in Texas' prisons is nearly five times that of the general population. SB 453 requires mandatory HIV testing of inmates upon entry into a state correctional facility. Individuals who are aware of their HIV status are less of a risk for spreading the infection and can get the proper early treatment to decrease the long term medical costs.

***Sexual Assault Prevention - SB 1175/HB 1944***

The public safety of all Texans is affected by the sexual violence that occurs in our prisons. Those who are victims of sexual assault in prison are at greater risk of contracting diseases such as HIV and Hepatitis C, and suffer from long-term psychological problems. HB 1944 creates the position of Ombudsperson in the Office of the Inspector General to monitor prevention and investigation policies to ensure impartial resolution of inmate complaints of sexual



assault.

***Eliminating Medicare Waiting Period - HCR 35***

Under federal law, individuals with disabilities who receive Social Security Disability Insurance (SSDI) benefits must wait two years before being eligible to receive Medicare. This is a burdensome requirement that hinders many Texans from receiving the healthcare they need. This session, I sponsored HCR 35, which urges the United States Congress to eliminate this onerous and sometimes deadly waiting period for disabled individuals.

***Mental Health Parity – SB 568***

Finally, I authored SB 568, which would have required a group health plan that provides coverage for mental illness to ensure coverage is equal to that provided for physical illnesses. All too often health plans have co-pays and deductibles for mental illnesses that are disproportionately high or place limits on treatment that prevent people from getting the help they need. This is not only discriminatory, but sends a message that mental illnesses are less important than other illnesses. Senate Bill 568 passed out of the Senate, but did not pass the House. I plan on fighting for this issue again in the next legislative session.

**Protecting Our Environment and Securing Affordable and Efficient Energy Alternatives for Our Future**

Preserving Texas air and water for future generations is an absolute necessity. We can no longer afford to put off the tough decisions on climate change, emissions and energy efficiency. This session, I offered a comprehensive package of environmental initiatives to take action on these issues to preserve our environment, significantly increase our energy efficiency and ensure our state's competitiveness in the decades ahead. While none of these important bills became law, we have now changed the debate in Texas on environmental issues. It is no longer a question of *if*



there will be change in Texas, but *when* there will be change.

The Legislature did win an important fight to help Mayor Bill White's effort to clean Houston's air. Working closely with my Houston-area colleagues, I helped lead the fight to defeat legislation which would have prohibited local governments from regulating pollution from outside their boundaries. Supporters of the bill called it a matter of local control, but air and water pollution doesn't adhere to city or county lines. If the state is not going to step up to the plate and implement policies to clean up our environment then it needs to get out of the way and allow local communities to take action.

Some other bills in the Ellis Environmental package

***Clean Cars - SB 124*** – This important legislation would have reduced air pollution from cars and trucks, saved consumers money at the gas pump, boosted our economy and cleaned up our state's air. It is incredibly important that Texas, the biggest polluting state in the nation and the state synonymous with big energy and big oil, stand up and take action on the biggest environmental issue of our time.

***Coal Plant Moratorium - SB 860*** - I authored legislation to stall the effort to build 18 new pulverized dirty coal plants in Texas until the state was able to do a comprehensive analysis of the effects such an initiative would have on the air we breathe.

***Global Warming - SB 860*** - Everyday we learn of the growing impact global warming has on our state, our nation and our world. Senate Bill 945 would have set Texas on the right path by creating the Texas Commission on Global Warming. The Commission would have studied the effects of global warming on the citizens and businesses of Texas



and worked to find the best solutions for the environmental and economic future our state.

***Hybrid Cars/HOV Lanes - SB 436*** - This bill would have authorized hybrid vehicles to have access to high occupancy vehicle lanes. The more hybrid vehicles on the road, the more we reduce our emissions and our air quality improves.

***Appliance Efficiency Standards - SB 489*** – Perhaps the most simple, effective and widespread way to improve our environment and provide a more secure future is to become more energy efficient. Senate Bill 489 would have established minimum efficiency standards for residential and commercial appliances to save energy.

***Solar Energy Rebates - SB 1357*** – Another way to improve our energy efficiency and security is to provide incentives for alternative energy uses. SB 1357 would have established a rebate program for residents and businesses that begin using solar energy.

***Texas Hotspots - SB 1906*** – One of the more unfortunate aspects of our environmental crisis is that poorer neighborhoods are disproportionately impacted by our policies. SB 1906 would have required the Texas Commission on Environmental Quality implement a plan to lower the toxic air pollution in areas identified on the Air Pollution Watch list.

#### **Enhancing the Sales Tax Holiday**

I passed two bills which will enhance the sales tax holiday that I authored in 1999. One bill will move the sales tax holiday to the third weekend in August. Because the Legislature mandated that public schools have a later start date, moving the sales tax holiday closer to the start of school will enable more people to take



advantage of the holiday. The second bill will add school backpacks to the list of items that are eligible for a sales tax break. Backpacks are an essential item for our school children and adding them to the list will only benefit families and children.

### **Helping low income Texans cope with the rising cost of energy/System Benefit Fund Restoration - SB 169**

The System Benefit Fund was established by the Texas Legislature in 1999 to provide discounts to low-income and elderly Texans on their monthly utility bills and ease the burden of rising electricity rates. Unfortunately, funding for the program was cut significantly in 2003, and finally discontinued in 2005, so deserving Texans, despite the fact they were still paying taxes for the fund, were not getting the relief on their electric bills they needed.

This session the Legislature partially restored \$200 million in funding for the program that will reduce utility costs for low-income Texans by up to 20% during the summer months: \$30 million for July through September in 2007; \$80 million for May through September in 2008; and \$90 million for May through September in 2009. As a result, It is estimated that around 330,000 Texans will receive discounts of approximately 12% this summer.

In order to qualify for the discount, a household must have an income that does not exceed 125% of the federal poverty level (~\$26,000 for a family of 4). Individuals who receive certain benefits, such as Medicaid and TANF, are automatically enrolled.

### **Protecting our right to vote/ Staving off voter ID**

Like last session, I helped defeat plans to enact voter intimidation laws in Texas, so-called Voter ID efforts that are nothing more than Jim Crow, dressed up a bit for the 21st Century.



These bills would have made it much more difficult for elderly, low-income and minority Texans to vote. Under these provisions, voters would be required to show a voter registration card *and* picture identification or two forms on non-picture identification in order to vote. The fact of the matter is that those calling for these new laws cannot point to a single case of fraud where requiring an ID would have had an impact, but we have many studies showing that ID laws dramatically reduce turnout, especially for the elderly, African Americans and Hispanics.

I'm going to fight voter ID as long as I'm in office. We won't go back.

### **Building a more fair and Just Texas Criminal Justice System**

Reforming Texas criminal justice system to ensure fairness, justice, and safety for all Texans remains one of my top priorities, and we truly moved in the right direction this session.

### ***Protecting the Right to Counsel and Fairness on Juries - SB's 168, 560 and HB 1178:***

I authored a number of bills this session that will significantly improve fairness in our justice system. SB 168, SB 560, HB 1178, and an amendment to HB 1617 will significantly increase state funding (up \$9.6M/year) to counties to help improve the quality of legal representation for indigent defendants, protect the right to counsel, improve civil legal services for the poor, and improve fairness and diversity on Texas juries.

### ***Protecting Texans from Identity Theft - SB 222***

I authored SB 222 to protect Texas families from the growing problem of identity theft. Senate Bill 222 will allow a person to place a security freeze on their credit without the requirement of a police report. If a consumer is going to be responsible for cleaning



up their own credit they should have the tools to do so. A "freeze" can prevent imposters from getting new credit, loans, and services in their name and the freeze can be removed at any time by the consumer if they are unhappy with it. SB 222 will be particularly useful to consumers who have had their information exposed or are at high risk of having their information exposed.

***Increase compensation for the wrongfully convicted - SB 262*** I was able to add this bill as an amendment to HB 814. No amount of money can make up for the years wrongfully incarcerated individuals are forced to suffer, but the added resources from this legislation can, at the very least, help provide them with the necessities to begin putting their lives back together.

We also achieved success in moving the debate forward on a number of other criminal justice issues.

***Texas Substance Abuse Treatment and Crime Prevention Act - SB 1909:*** I am particularly proud of SB 1909, landmark legislation that would have given judges the ability to divert many nonviolent low-level drug possession offenders, with no serious criminal history, from costly prison stays to effective treatment programs. SB 1909 would have significantly enhanced public safety by reducing drug related crime and preserving jail and prison space for violent offenders, and saved Texas taxpayers hundreds of millions of dollars. The bill passed the Senate and House committees, through bipartisan cooperation, but, unfortunately, did not pass during the final days of session. I plan to build on the progress we made this session and work with my colleagues during the interim to pass this important legislation in the next legislative session.

***Texas Innocence Commission - SB 263*** This important legislation would have created an independent commission to



examine the increasing number of cases in Texas where innocent citizens have been wrongfully convicted, identify the causes of those tragedies and flaws in our criminal justice and recommend changes to prevent such future miscarriages of justice.

***Statewide Habeas Public Defender Office - SB 1655*** In 2001, I passed landmark legislation to overhaul Texas' indigent criminal defense system to ensure all Texans are guaranteed their constitutional right to effective counsel. This session, SB 1655, would have furthered this effort by creating the first statewide Public Defender office in Texas to ensure quality legal representation for indigent defendants in capital habeas proceedings. The Senate passed SB 1655 unanimously, but the legislation failed to pass the House.

***Mental illness gun background checks - SB 1755***

Following the horrible tragedy at Virginia Tech, I introduced legislation to require Texas to finally turn over mental health commitment information to the United States Department of Justice National Instant Criminal Background Check System (NICS). Currently, persons in Texas involuntarily committed to psychiatric hospitals can easily purchase and possess firearms despite having a court finding that they are likely to cause serious harm to themselves or to others. The Senate passed SB 1755 but it failed to pass the House. However, legislation is currently pending in the United States Congress which, if passed, will give states incentives to report mental health data to NICS.

**Creating Opportunities for Texans to Own their First Home – SB1908**

I am very proud to have passed the state's most comprehensive housing legislation since 2003.



SB 1908 improves the first-time homebuyer program by allowing down-payment and closing costs loan assistance for first-time homebuyers with up to 80 percent of area mean family income (~\$48,800 for a family in Houston); dedicates 5% of HOME funds for housing for the disabled in any area of the state; establishes criteria for the Texas Department of Housing and Community Affairs (TDHCA) to develop a more equitable distribution of tax credits for multifamily affordable housing projects in both rural and urban areas across the state; and ensures greater transparency in TDHCA operations, while also giving the agency clear authority to penalize bad developers.

The bill also provides incentives to encourage developers to provide free notary public services to residents and build in areas that have recently been declared disaster areas and grants eligible municipalities the authority to adopt an Urban Land Bank Program to allow the private sale of tax-foreclosed property for the purposes of affordable housing development.

### **Protecting the Free Press**

The press plays a vitally important role in our democracy and must be protected from government intimidation. That is why I filed the **Free Flow of Information Act** which struck a delicate balance between preserving the public's right to know the truth from an independent press, and the state's ability to uphold justice. Thirty-three other states and the District of Columbia currently have some form of law protecting journalists and their sources. I fully intend to bring this issue back before the legislature next session, because a free and independent press is vital to our democracy.

### **Now is not the time to retreat.**

As you can see it was a busy and productive session (and this was by no means an exhaustive list!). I want to thank you for all the

calls and notes of support you sent me during the legislative session. Now is not the time to retreat. We work over the interim session to develop our agenda build more support for issues that I believe will build a brighter and better future for all Texans.

Sincerely,

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY



January 5, 2007

The Honorable Robert Duncan  
Chairman, Senate Committee on State Affairs  
PO Box 12068  
Austin, TX 78711

Dear Chairman Duncan:

Congratulations on the completion of the Senate Committee on State Affairs' Interim Report. The Committee did an excellent job of identifying important issues to examine and identified sound and appropriate recommendations relating to its charges.


Despite our support for most of the Committee's recommendations, we take exception to the findings associated with Charge 3 on voter identification. Although the report explicitly states, "The Committee makes no recommendation regarding policy issues in favor of or in opposition to voter identification and/or ballot authenticity," we feel the conclusion implies that photo ID requirements are desirable. Furthermore, with respect to claims that additional voter ID requirements may disenfranchise certain populations, the conclusion asserts, "there are no studies presenting data to support such claims." However, Georgia Secretary of State, Cathy Cox, recently completed a demographic analysis revealing that between a quarter and a third of senior and African American voters lack state issued photo identification, thus disenfranchising them from the elections process. The Secretary's findings can be found at: <http://www.sos.state.ga.us/pressrel/062306.htm>

In the conclusion of the report, photo identification requirements for participation in state administered services such as the Food Stamp Program are cited. However, the ability to vote is a basic right for all citizens and therefore, should not be likened to services that require additional documentation. Texas should do everything in its power to facilitate ease of voting and we feel additional ID requirements would present an undue burden for voters.

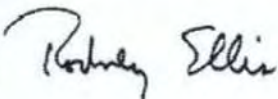
Requiring additional personal identification for voters would also result in an unnecessary cost to the State. Furthermore, the report includes the following statement which implies that additional voter identification requirements would serve little practical purpose with respect to decreasing instances of voter fraud, "It is unknown whether the current level of voter fraud will decrease, but a voter photo ID law will certainly prevent some fraud." Testimony provided by the Office of the Secretary of State indicates extremely low instances of in-person voter fraud. It is our shared belief that anti-fraud measures adopted by the federal Help America Vote Act (HAVA), sufficiently deter voter fraud and that additional photo identification measures are unnecessary.

Please do not hesitate to contact either one of us regarding this issue, or any other matter of concern to the Committee. Thank you very much for your attention to this matter and for outstanding work on the report.

Sincerely,



Eddie Lucio, Jr.  
State Senator, District 27



Rodney Ellis  
State Senator, District 13

Deleted:



Mr. T. Christian Herren, Jr.  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

Dear Mr. Herren,

The Texas Secretary of State's office recently submitted for pre-clearance SB 14, which imposes strict photo I.D. requirements for voting. The people most likely to not have the types of identification required by this legislation are African Americans, Latinos, Asians, women, students, the elderly, disabled voters, low-income voters, and veterans. We are writing to strongly urge you not to grant pre-clearance to this legislation on the grounds that it not only violates Section 2, 5 and 10 of the Voting Rights Act, we believe it to be in violation of the 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>, and 26<sup>th</sup> Amendments to the Constitution. While the burden of proof is on the state to show that the legislation will not have the effect of denying or abridging the right to vote on account of race or color, and to date they have provided no evidence of which we are aware that proves this, we feel it is our duty to provide your office the overwhelming evidence that this legislation is in fact discriminatory, both in purpose and effect, and violates not only the VRA, but also several amendments to the Constitution.

We have included with this letter supporting documents that confirm the statistics and statements referenced therein, editorials from major Texas newspapers opposing the legislation, as well as a petition signed by over 6700 registered Texas voters expressing their opposition to this law. As you will see, 87 African Americans, 34 Latinos, 4 Asians, and many others, for a total of 226, who signed the petition indicated that they do not possess the types of identification that will be required under SB 14 and are likely to be disenfranchised. Those are real people whose rights are being violated by this legislation, the purpose and effect of which is to suppress the vote.

### **Review of the laws**

Under the **Voting Rights Act of 1965**, your office must review this legislation for pre-clearance before it can go into effect. As you know, Texas is covered by this provision due to our state's long history of discrimination.

Section 2 states "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." Texas is also required to show that the proposed change does not have the purpose or effect of discriminating against a "language minority group." Membership in a language minority group includes "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." Section 5 states "Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting



qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that *such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure...*"

Section 10 states "(a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting."

We believe that SB 14 is in violation of all of these sections of the VRA. Detailed evidence will be provided in the forthcoming sections.

The **14<sup>th</sup> Amendment** states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has repeatedly stated that voting is a "fundamental right" on the same plane as marriage (*Loving v. Virginia*), privacy (*Griswold v. Connecticut* (1965)), or interstate travel (*Shapiro v. Thompson* (1969)). For any abridgment of those rights to be constitutional, the Court has held, the legislation must pass strict scrutiny. Thus, on this account, equal protection jurisprudence may be appropriately applied to voting rights. By imposing impediments to voting that disproportionately affect minorities, low-income voters, the elderly, the disabled, and others who are not as easily able to obtain the necessary id, SB 14 violates the Equal Protection Clause of the 14<sup>th</sup> Amendment.

The **15<sup>th</sup> Amendment** states that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" and that "The Congress shall have power to enforce this article by appropriate legislation" which it did through the Voting Rights Act of 1965, which shall be discussed later. By requiring documentation that voters of color are less likely to possess than white voters, SB 14 violates the 15<sup>th</sup> Amendment.

The **19<sup>th</sup> Amendment** states that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." By requiring a strict set of documentation that is less likely to be an exact match to the voter records for women than for men, SB 14 violates the 19<sup>th</sup> Amendment.



The **24<sup>th</sup> Amendment** states that "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." Poll taxes of any kind were further declared unconstitutional in *Harper v. Virginia Board of Elections* (1966) because they violated the Equal Protection Clause of the Fourteenth Amendment. (See above). The monetary costs of obtaining identification and/or the documents required to obtain a free Election Identification Certificate, in addition to the cost of travel and possible lost wages if a voter is required to take time off work to obtain the required I.D. are costs incurred in order to vote and are therefore equivalent to a poll tax.

The **26<sup>th</sup> Amendment** states that "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." College students and elderly voters are disproportionately negatively affected by this legislation, making it a violation of the 26<sup>th</sup> amendment.

### **History of discrimination**

Sadly, Texas has a long history of not wanting to enfranchise voters. Our state challenged the 14<sup>th</sup> and 26<sup>th</sup> amendments in court, grudgingly ratified the 15<sup>th</sup> amendment as a condition for being able to re-join the union after the civil war, and only just recently ratified the 24<sup>th</sup> amendment in 2009.

Unfortunately, we don't have to reach very far back in time to provide evidence of voter intimidation and suppression targeted at minority communities right here in Texas. The Department of Justice has been called upon several times recently to combat these practices.

In 2006, our state Attorney General went on a self-appointed crusade against voter fraud, harassing members of the African American community, ultimately to come up empty handed.

In 2008, the Texas Democratic Party was forced to file a lawsuit against the Harris County Tax Assessor Collector Paul Bettencourt over practices that denied almost 70,000 Harris County citizens the right to register and vote. Although a settlement agreement was reached in that case, the TDP had to take his successor to court again for violating the terms of the settlement. There remains compelling evidence that Harris County denies thousands of voter registration applications - more than any other in the nation - and that those rejections fall disproportionately on minority voters.

In 2010, the King Street Patriots, a shadowy "non-partisan" organization closely aligned with the Republican Party implemented their "True the Vote" program in Harris County. There the organization's poll watchers, predominantly white people at polling locations in minority neighborhoods, harassed and intimidated voters. Numerous complaints were filed, prompting the County Attorney's office to step in and your Department to send federal inspectors to monitor the election.



Recently in Waller County, a place on which you probably have a thick file, a local African American candidate made allegations of voter fraud committed by the County Clerk; fraud which he believes cost him the election. The investigation is ongoing, but as you will read in the enclosed article, many in the county feel there is something rotten in Waller, and it wouldn't be the first time.

### **The Facts**

As you know, studies have shown that 11 percent of eligible voters, more than 20 million Americans, do not have a government-issued ID. This percentage is even higher for women, seniors, racial minorities, low-income voters and students. Election experts from Rutgers and Ohio State Universities have shown that the implementation of photo I.D. laws in other states caused a 3% across-the-board reduction in voter turnout during the 2004 presidential election. Their studies found a decrease in voter turnout of 5.7% among African-Americans and 10 percent among Hispanics.

Specifically here in Texas, according to estimates by the Carter-Baker commission, the photo I.D. bill is likely to disenfranchise anywhere from 150,000 to 500,000 of the 13,000,000 eligible voters. While testifying in the House Select Committee on Voter Fraud, the former Chair of the Bipartisan Indiana Election Commission stated that SB 14 is "stricter than the Indiana law" and stands to be the strictest photo I.D. bill in the country. Texas already ranks 50<sup>th</sup> in the country in the number of eligible voters who vote, and a strict photo I.D. law is likely to further reduce the number of eligible voters that participate in Texas elections.

### **Who doesn't have the right types of id?**

SB 14 is so restrictive in the forms of identification that are acceptable, that many people will not be able to meet such a high burden. The only acceptable forms of I.D. under SB 14 are a Texas driver's license or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than 60 days before the date of presentation; a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than 60 days before the date of presentation, a United States citizenship certificate issued to the person that contains the person's photograph; a United States passport issued to the person that has not expired or that expired no earlier than 60 days before the date of presentation; a license to carry a concealed handgun issued to the person by the Department of Public Safety that has not expired or that expired no earlier than 60 days before the date of presentation, or an election identification certificate (a new, free type of identification that would be issued by DPS).

One in five senior women do not renew their drivers' licenses. Though SB 14 allows for a license that was expired in the sixty days prior to an election date to be considered valid, many senior women no longer drive and have no reason to renew their license. The Brennan Center for Justice has found that voters over 65 were eight percent less likely to have a driver's license than younger voters. Texas college students registered to vote in Texas cannot use an out-of-state driver's license. We've enclosed the costs of a Texas driver's license or personal I.D., which varies depending on age, with this packet. Requiring voters to obtain or renew a license or I.D.



they would otherwise not have had to obtain creates a new hardship for voters. Also, due to recent budget cutbacks, wait times at state run driver's license offices in the most populated counties typically run 1 to 2 hours.

Further, only voters who serve in the military would be able to obtain a military id. Voters who are natural born citizens who do not intend to travel outside the United States have no reason to obtain a citizenship certificate or passport. And, only 2% of Texans have a concealed handgun license.

#### **Why not allow other forms of I.D.?**

The purpose of the photo I.D. is allegedly to allow poll workers to match the face of the person appearing before them wishing to vote with the name on the registration list. The I.D. card is not used to confirm residency, and therefore, the address on the I.D. is irrelevant. Even so, there are other types of photo id, including photo I.D. issued by governmental entities, that provide the same ability (to put a face with a name) that are not acceptable as valid forms of identification for voting under this law.

The Texas Secretary of State's office has recently declared that a Veterans Administration I.D. card (even though it contains the person's name and a photo) is not a valid form of photo I.D. under the new law.

College students, including those who attend state schools, are not allowed to use their school I.D. as acceptable proof of identification to vote. The University of Texas for example, provides students with a photo I.D. that has their name and a magnetic strip containing identifying information. While the student is required to produce a government-issued photo I.D. as proof of identity, the list of acceptable forms of I.D. is more extensive than SB 14 (US or Canadian driver's license, temporary license, instruction permit, passport, alien registration card with photo, U.S. citizen I.D. card, or resident citizen card), which would allow more students the opportunity to vote.

#### **Why is the free Election Identification certificate not enough?**

While voters who do not have the specific types of photo I.D. required by the bill can obtain an Election Identification Certificate from the Department of Public Safety for free, many of the voters impacted face transportation barriers that prevent them from getting to a DPS office, particularly in rural communities. For example, in Senator Uresti's west Texas district, thousands of voters would have to travel 137 miles round trip in order to get to a full-service DPS office. Arlington, TX (a majority-minority city) is the largest city in America with no public transit system. Many other Texans face similar challenges. Below is summary of the current availability of DPS offices currently vs this past January. Due to budget cuts, many DPS offices are expected to be closed.

#### **DPS FACTS** (September 2, 2011 vs January 24, 2011)

- ☐ **Currently, 12 counties do not have DPS stations**



- o In January 13 counties did not have DPS stations -- Over 243,000 people live in these counties
- ☐ Currently, **81 counties have no office with an OPEN Drivers License station (includes the 12 offices above)**
  - o In January, 83 counties were without an OPEN DPS station
  - o Many DPS stations upgrading their computer systems in January and no timeline for when stations will be re-opened
  - ☐ DPS officials are unsure if these new computer systems will function properly.
  - ☐ New technology involves "air-cards" and internet based systems which may not function properly in all areas.
- ☒ DPS stations are only open Monday - Friday, with most closed during the lunch hours, thus placing a burden on working individuals
- ☐ There are **15 Drivers License offices that are open one day a week or less**
  - o In January, 7 stations operated only 1 day a week

Transportation barriers may not be the only impediment to obtaining a free I.D. for eligible voters. To obtain a free EIC, the voter will have to produce documentation verifying their identity, in most cases multiple pieces of identification, many of which (such as a birth certificate, which costs \$22, or passport, which costs \$145) cost money and take time to obtain. The Secretary of State's office claims that the documents required to obtain an EIC will likely be similar to the documentation required to obtain a personal ID. The list of the various types of documentation that are required by DPS to obtain a personal I.D. is enclosed.

The chart below from the Center on Public Policy Priorities shows that a significant percentage of the population does not have a birth certificate or passport. The percentage is even higher for African Americans, rural residents, and people with an income under \$25,000. The entire research paper is enclosed.

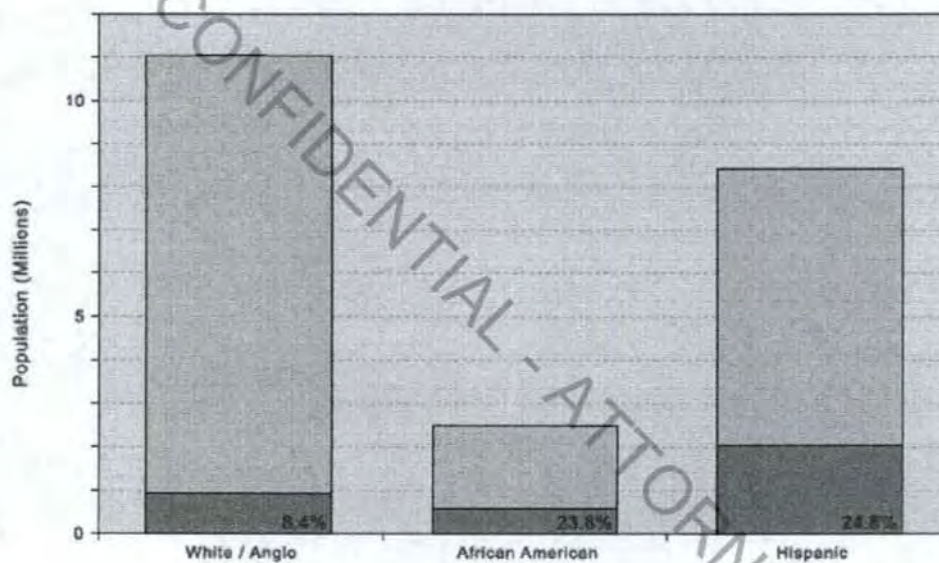




Obtaining a birth certificate not only costs money, it requires the voter to present certain forms of identification, such as a photo id. If they had a photo id, they wouldn't be seeking the birth certificate just to obtain a free election identification certificate. The list of documents voters would need to produce in order to obtain a birth certificate is enclosed.

Not only do a disproportionate number of minorities lack the necessary documentation to obtain a free id, it is even more difficult for minorities without documentation to pay for the necessary documentation because a greater percentage of minorities than whites live in poverty. The chart below from the Texas Politics Project shows the breakdown of Texans living in poverty by ethnic group.

**Percentage of Total Persons in Poverty by Group, 2007**



#### **Difference from the Indiana Voter I.D. law**

Indiana allows voters to be exempted simply by signing an affidavit stating that they are indigent.

Indiana also has a longer period (10 days) for voters to appear to present I.D. or affirm that an exemption applies to them. They also may vote at the county election office during early voting and affirm that an exemption applies to them, without having to vote a provisional ballot and wait until the election is over as is required in the Texas law.

Voters in Indiana are also allowed to use an I.D. that has expired up to two years from the election, as opposed to 60 days for Texans.

College students in Texas are not allowed to use their school id, even those who attend state schools.



Indiana has attempted to address the DPS availability issue by requiring that full service license branches must remain open from 8:30 a.m. to 8:00 p.m. on the day before each general, municipal, primary and special election and from 6:00 a.m. to 6:00 p.m. each general, municipal, primary and special election day solely for the purpose of issuing driver's licenses and photo identification cards.

### **Inadequate Funding**

The fiscal note for SB 14 claims that the legislation will only cost the state \$2 million to implement. This is incredibly unrealistic. The state admits in the fiscal note that it does not know the costs that will be incurred as a result of the free election identification certificates being provided. However, if the percentage of the eligible voting population who will need a free I.D. and the cost to the state per card is assumed to be similar to Indiana, then we can make the following assumptions, according to data provided by the United States Elections Project:

Indiana Voting Eligible Pop = 4,678,739

Texas Voting Eligible Pop = 15,407,666

Indiana provided 168,000 free IDs at a cost of \$1,309,093 = 3.6% of VEP = \$7.79 per card

3.6% of Texas VEP = 554,676 people needing a free I.D. at \$7.79 per card = \$4,320,926 in cost to the state

Beyond that, the voter education component alone is likely to cost more than \$2 million if done properly. According to our estimate of reasonable saturation just on television in all Texas media markets, the cost would be \$2,128,250. In 2006, when former Secretary of State Roger Williams implemented the VoTexas initiative to inform voters about changes to the voting process using television, radio, print and internet advertisements, that initiative cost \$5 million.

So if the cost of providing free IDs is on par with the costs incurred by Indiana to implement their law, and the state runs a true voter education program similar to the VoTexas program it ran previously, that alone is over **\$9 million**, which is money the state of Texas doesn't have. An assumption is made in the fiscal note that HAVA funds will be available to help offset their \$2 million estimate, but the Secretary of State's office was not able to tell the legislators how much, if any, HAVA funds might be available.

### **Flawed Legislative Process**

This legislation was passed in a hurry as one of the Governor's "emergency" measures. A "Committee on Voter I.D. and Voter Fraud" was established in the State House, consisting of 6 Republicans and 3 Democrats, where hearings were hurriedly held and a vote was taken with little discussion. Once the bill reached the House floor, many points of order were raised and overruled, numerous amendments were offered to make the bill less onerous, such as same day registration and exemptions for voters over 65, but were voted down almost always on a party line vote. Several members raised questions about the impact the bill would have on voters in their districts, but their questions were met with deflection, obfuscation, and occasionally derision from the proponents of the bill. The transcript of the floor debate in the House is enclosed.